



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/149473

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on June 19, 2013, at Racine, Wisconsin.

The matter was adjourned to and completed on July 24, 2013, because there were issues regarding who had authorization to be present at the hearing and who was representing Petitioner's interests. As such, the parties needed additional time to gather and submit documentation related to authorizations to represent Petitioner's interests.

On June 19, 2013, the agency was asked to provide a copy of the Authorization for Disclosure of Confidential Information signed by Petitioner. Due to oversight on both the part of the ALJ and the agency, the document was not submitted until August 1, 2013, after ALJ noticed the document was missing and contacted the parties via e-mail. The document has been marked as Exhibit 16 and entered into the record.

The issue for determination is whether the agency correctly denied Petitioner's January 30, 2013, application for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Virginia [REDACTED], Economic Support Specialist, Racine County Long Term
Care

Racine County Department of Human Services

1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals
ALSO PRESENT:

Lincoln Lutheran's Representative who appeared only as an observer:

Attorney Jennifer Hayden
1011 N. Mayfair Rd, Suite 200
Wauwatosa, WI 53226

NOTE:

Petitioner's nursing home, Lincoln Lutheran retained the legal services of Storm, Balgeman, Miller & Kippel, S.C. The law firm assigned the matter to Attorney Jennifer Hayden. Petitioner's guardian of the person signed a release of confidential information, giving the Division of Hearings and Appeals permission to disclose information to the law firm. (See Exhibit 6, pg. 3) Because Petitioner's Medicaid eligibility is peripherally related to her receipt of medical care and because the guardian of the person signed a release of confidential information, Attorney Hayden was permitted to sit in and observe the hearing. However, Attorney Hayden was not allowed to participate in the hearing because the nursing home has no standing at a fair hearing concerning the denial of a Medicaid application and because Petitioner has a Durable Financial Power of Attorney, who is the more appropriate party to represent her in matters relating to health insurance, such as Medicaid.

A FURTHER NOTE:

On July 30, 2013, Attorney Hayden submitted a letter indicating that her firm was renewing a request for fair hearing that Lincoln Lutheran filed on behalf of Petitioner, concerning the denial of her application for Medicaid benefits. First, Attorney Hayden made it clear on the June 19, 2013 hearing date that her firm's client is the nursing home, not the Petitioner. As such, the nursing home has no standing to request a fair hearing. Second, the request for fair hearing submitted by Lincoln Lutheran was not timely.

As discussed below, Petitioner's application for Medicaid benefits was denied on April 3, 2013. An appeal needed to be filed within 45 days of April 3, 2013. See Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.2 The appeal submitted by Lincoln Lutheran was post-marked and therefore received by the Division of Hearings and Appeals on June 14, 2013, 72 days after the denial, well after the filing deadline.

Finally, the issue of whether the agency correctly denied Petitioner's application for Medicaid benefits has already been addressed in the hearing that took place on July 24, 2013 and the decision issued herein.

Based upon all of the foregoing, no additional hearing concerning the denial of Petitioner's January 30, 2013 application for Medicaid will be granted at the request of Lincoln Lutheran or its attorneys and Attorney Hayden was notified of such, in a separate letter.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On November 14, 1996, Petitioner executed a Durable General Financial Power of Attorney (Financial Power of Attorney), and appointed her son DWV, as her attorney-in-fact. Petitioner appointed her other son, DSV, as her alternate agent. (Exhibit 5, pg. 3)
3. On August 26, 2001, DWV passed away and DSV succeeded him as Petitioner's Financial Power of Attorney. (Exhibit 5, pg. 13)
4. On June 11, 2012, the Racine County Circuit Court found Petitioner to be incompetent and appointed CG to be Petitioner's guardian of the person. (Exhibit 6, pg. 5)
5. On January 30, 2013, Lincoln Lutheran, Petitioner's nursing home, had Petitioner sign an application for Medicaid benefits, noting DSV as a contact person. (Exhibit 15)
6. Petitioner's Financial Power of Attorney, DSV, was not made aware that his mother was applying for Medicaid benefits, until after she signed the application. (Testimony of DSV)
7. On March 11, 2013, the agency sent to DSV a Notice of Proof and Information Needed, requesting, in part, verification of assets in a bank account at 5th/3rd Bank. (Exhibit 10)
8. On March 19, 2013, the agency sent DSV another Notice of Proof and Information Needed requesting, in part, verification of assets in the 5th/3rd bank account. The notice advised DSV that the deadline for providing the requested proof was March 30, 2013. (Exhibit 11)
9. DSV received the March 19, 2013 Notice of Proof and Information needed, but did not provide the requested verification until a few weeks before the July 24, 2013 hearing date, because he overlooked it when reading the notice. (Testimony of DSV and Ms. [REDACTED])
10. DSV has access to the 5th/3rd bank records. (Testimony of DSV)
11. On April 3, 2013, the agency sent DSV notice that his mother's January 30, 2013 application for Medicaid benefits was denied because he did not provide the required proof needed. (Exhibit 14)
12. DSV filed a request for fair hearing on behalf of Petitioner that was received on May 20, 2013. (Exhibit 1)
13. On May 23, 2013, Lincoln Lutheran had Petitioner sign an Authorization for Disclosure of Confidential Information to authorize a [REDACTED] [REDACTED], a Business Office Specialist at Lincoln Village to exchange information with the WKRP consortium. The document was signed by Ms. [REDACTED] as a witness. (Exhibit 16)
14. Petitioner's Guardian, through Lincoln Lutheran and the law firm of Storm, Balgeman, Miller & Kippel, S.C., filed a request for fair hearing on behalf of Petitioner that was received by the Division of Hearings and Appeal on June 14, 2013.

DISCUSSION

A valid signature is required on the Medicaid application. *Medicaid Eligibility Handbook (MEH) §2.5.1* If a person has been deemed incompetent or is otherwise incapacitated, someone "acting responsibly for the individual" should sign the form on the individual's behalf. Id.

Petitioner's nursing home, Lincoln Lutheran, had Petitioner sign the January 30, 2013, application for Medicaid Benefits. However, six months earlier, on June 11, 2012, the Racine County Circuit Court found Petitioner to be incompetent. The court specifically found Petitioner to "lack the evaluative capacity in full" to give informed consent to "social and supported living services", or to "give informed consent to release of confidential records other than court, treatment and patient health care records and re-disclose as appropriate." See Exhibit 8, pg. 3 of 8 Thus, because Petitioner could not legally sign the application, it is invalid. Even if the January 30, 2013 application could be considered valid, the agency appropriately denied it.

Verification of information is a part of determining eligibility for Medicaid. “To verify means to establish the accuracy of verbal or written statements” about an applicant’s/member’s circumstances. *MEH §20.1.1*

Verification of assets is mandatory. *MEH §20.3.1 and §20.3.5* The applicant/member is responsible for providing verification of information that is not available through the state’s data exchange. *MEH §20.5* If verification is not provided, benefits may be denied, unless the member is unable to obtain verification of the asset. *MEH §20.8.3; see also MEH §20.5*

Petitioner’s Financial Power of Attorney timely received the March 19, 2013 notice requesting verification of a bank account with 5th/3rd Bank. Regrettably, Petitioner’s Financial Power of Attorney did not provide verification of that bank account by the March 30, 2013 deadline. There is no indication in the record that Petitioner’s Power of Attorney was unable to access the required documentation. As such, Petitioner’s application for Medicaid benefits was properly denied.

I note to the Petitioner that her nursing home, Lincoln Lutheran, will not receive a copy of this Decision. If Petitioner wants Lincoln Lutheran to have a copy of this decision, her power of attorney will have to forward a copy to the nursing home.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner’s January 30, 2013 application for Medicaid benefits.

THEREFORE, it is

ORDERED

The appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

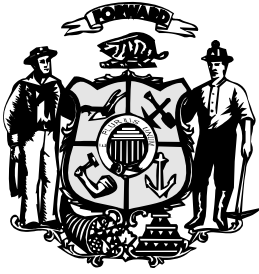
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of August, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 2, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability
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tklippel@sbm-law.com